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IN THE

Supreme Court of the United States

October Term, 1962

Nos. 379 AND 380

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

v.

MARIE LORIDO,
Respondent.

Brief of Respondent and Appendix Thereto

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Marie Lorido respectfully prays that this Court refuse to grant the relief sought by Pan-American Life Insurance Company. Petitioner has filed, simultaneously, two separate petitions in this Court. The first seeks the issuance of a writ of certiorari to the Supreme Court of Florida. The second prays for the issuance of a writ of certiorari to the District Court of Appeal of Florida, Third District. Petitioner freely admits, on Page 2 of both Petitions, that its reason for so doing is that its counsel is unsure to which of these state courts the writ should be directed.

REASONS RELIED ON FOR DENIAL OF THE WRITS AND BRIEF ARGUMENT IN SUPPORT THEREOF

1. Petitioner has not exhausted its remedy in the

state courts. Florida Appellate Rules, 1962 Revision, provide that an unsuccessful litigant may apply to the Supreme Court for a rehearing. Petitioner chose not so to do. Instead, it invokes the jurisdiction of this Court, improvidently. **Hammerstein v. Superior Court of California, et al.**, 341 U.S. 491, rehearing denied 342 U.S. 843.

2. Pan-American Life Insurance Company, by seeking writs of certiorari to two separate state courts, to review the merits of a single case, places the burden of choice upon this Court. Obviously, this Court should not entertain both Petitions and grant a separate writ to each of the two appellate courts.

3. Petitioner argues, in invoking the jurisdiction of this Court, that this case involves a Federal question of substance, either pointedly overlooked in the decision at the trial level, or passed upon **sub silentio** by the appellate courts in a way probably not in accord with applicable decisions of this Court. Yet petitioner, having asserted the defense of contravention of a Federal statute and treaty even in its initial pleadings, chose to prosecute its defense in a manner at variance with the established rules of appellate procedure in this state. Petitioner chose to appeal the trial court's decision to the District Court of Appeal of Florida. Petitioner sought, thereafter, to petition the Supreme Court of Florida for a writ of certiorari to the District Court. Florida Appellate Rules, 1962 Revision, the pertinent text of which is printed in the Appendix to this Brief at page 1, provide, as a matter of right, a) that an appeal from the trial courts may be taken directly to the Supreme Court from a final judgment passing directly upon the validity of a Federal statute or treaty, and b) an appeal to the Supreme Court from

a decision of a district court of appeal passing initially upon the validity of a Federal statute or treaty. We can only assume petitioner, did not seriously contend the involvement of a Federal question, or that its own deliberate choice of state appellate procedure would pave the way for the invocation of the jurisdiction of this Court.

A review on writ of certiorari is not a matter of right, but of sound judicial discretion. For the reasons cited above, we urge the Court, respectfully, to refuse jurisdiction to grant the writs.

CONCLUSION

It is respectfully submitted that these petitions be denied.

Counsel of Record for Respondent
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Appendix to Brief of Respondent

FLORIDA APPELLATE RULES, 1962 REVISION

Rule 3.14 Rehearings

a. TIME FOR. Unless further time is allowed, rehearings must be applied for by petition in writing within 15 days after the filing of the decision or order of the Court.

b. CONTENTS OF PETITION. The petition for rehearing shall not assume a new ground or position from that taken in the original argument or briefs upon which the cause was submitted, and must set forth concisely, and without argument, the alleged omissions, oversights, causes or grounds on which it is based.

FLORIDA APPELLATE RULES, 1962 REVISION

Rule 2.1 The Supreme Court

* * * * *

(5) JURISDICTION OF THE SUPREME COURT

(a) Appeals from trial courts may be taken directly to the Supreme Court, as a matter of right, only from judgments imposing the death penalty, from final judgments or decrees passing directly upon the validity of a state statute or a federal statute or treaty, or construing a controlling provision of the Florida or Federal Constitution, ...

(b) Appeals from district courts of appeal may be taken to the Supreme Court, as a matter of right, only from decisions initially passing upon the validity of a state statute, a federal statute or treaty, or initially construing a controlling provision of the Florida or Federal Constitution. . . . .

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have, in accordance with the requirement of Rule 33, sub-paragraph 3(b) of the Rules of the Supreme Court of the United States, personally delivered a true copy of the foregoing Brief of Respondent and Appendix Thereto to JAMES A. DIXON, ESQ., counsel of record for Petitioner, and MESSRS. DIXON, DeJARNETTE, BRADFORD, WILLIAMS, McKAY & KIMBRELL, at their offices on the 9th Floor, Dade Federal Building, 101 East Flagler Street, Miami, Florida, this ____ day of September, 1963.

_____

Counsel of Record for Respondent